The Solicitors' Journal
and Weekly Reporter.
VOLUME LXVI.

The Solicitors' Journal
and Weekly Reporter.

(ESTABLISHED IN 1857.)

LONDON, OCTOBER 15, 1921.

ANNUAL SUBSCRIPTION, PAYABLE IN ADVANCE.

£2 12s.; by Post, £2 14s.; Foreign, £2 16s.

HALF-YEARLY AND QUARTERLY SUBSCRIPTIONS IN PROPORTION.

*** The Editor cannot undertake to return rejected contributions, and copies should be kept of all articles sent by writers who are not on the regular staff of the JOURNAL.

All letters intended for publication must be authenticated by the name of the writer.

GENERAL HEADINGS.

Cases Reported this Week.

Current Topics.

The late Sir Samuel Evans.

THE LORD CHANCELLOR, in unveiling at the Law Courts on Wednesday, the bust of Sir SAMUEL EVANS, late President of the Probate, Divorce and Admiralty Division, paid a well-deserved tribute to his personal character and abilities. It was an unexpected event when in 1910 he left the office of Solicitor-General to become President, and this happened to be followed in a few years by the outbreak of the war which made him substantially the successor of Lord STOWELL in the Prize Court. In the interval, the Crimean War had contributed a certain number of Prize decisions, but these were insignificant in comparison both with those of Lord STOWELL and of Sir SAMUEL EVANS. The chief intervening event had been the development during the American Civil War of the doctrine of continuous voyage, and this was one of the features of recent decisions. Sir SAMUEL EVANS had to deal with many new problems—rather, perhaps, old problems presented under new conditions—and he performed his task in a manner which makes it very fitting that he should be kept in visible remembrance at the courts.

Nationalism.

WE REFERRED last week to the case of Dr. LEVY. We gather from the daily press that the Home Secretary does not propose to recede from the harsh position that he has taken up, and that this "state-less" person must find a home with some people of more humanity and sense than mark, in this respect, the British Government. Mr. SHORTT, we understand, points to the Aliens Restriction Amendment Act, 1919, and says he has no choice; but he should know from Lord BACON that a penal law, if it has grown unfit for the present time, should be "by wise judges confined in the execution"; and with all reasonable people the policy which dictated the Aliens Restriction Act in a time of panic has now given way to the desire to encourage friendly relations with all people. Lord HUGH CECIL, in a striking letter

to *The Times* this week, has called nationalism the curse of Europe, and it is this which is at the back of Mr. SHORTT'S statute. But, of course, criticisms of nationalism are nothing new. They are the common place of historians and international lawyers. It has recently been described as "one of the greatest obstacles to the further development of the international world that there is to-day" (Foulke's International Law, I, p. 66). The official treatment of Dr. LEVY is a negation of the sentiments that actuate all right-thinking men.

Appeal Court Judges in the Divisional Court.

IN THE CASE, referred to below, *Great Central Railway Co.* v. *Bates*, it is interesting to note that the judges who heard the case in the Divisional Court, Lord STERNDALE, M.R., and Lord Justice ATKIN, were both judges of the Court of Appeal sitting as additional judges of the King's Bench Division. A difficulty may easily arise, if the case is appealed. For the Court of Appeal contains only six judges, and two of those six were in fact the judges in the court below. It is not likely that either would sit again on appeal from their own decision, but without their presence it might be difficult to get a court, and some unavoidable delay in hearing the appeal would result. Moreover, three judges of the Court of Appeal, of whom one, and perhaps two, would, in practice, be judges of the King's Bench Division lent to the Court of Appeal, would have some diffidence in dissenting from a judgment of two Lords Justices given in the court below. The question is likely to arise sooner or later, now that congestion of business and the growth of unconventional modes of attacking arrears are becoming common in our Supreme Court of Judicature. And the question suggests itself whether the time has not come to get rid altogether of the intermediate appeal to the Divisional Court in County Court cases. It has been eliminated by statute in Workmen's Compensation cases and in certain cases arising out of the Agricultural Holdings Act 1908, section 13 (3) (see also R. S. C. Order of 58, Rule 20, and *Williams* v. *Wallis & Cox*, 1914, 2 *K.B.* 438) as well as in one or two other special kinds of appeal. Really, there seems to be no reason, either of expense or convenience, in retaining the jurisdiction of the King's Bench Division to hear County Court appeals; it is simply the relic of historical conditions when no regular Court of Appeal had yet been evolved.

Leasehold Enfranchisement.

IN THE INTERESTING paper read by Mr. SAW at the Scarborough Meeting on "Leasehold Enfranchisement," which we print in full elsewhere, no reference is made to the Report of the Select Committee on Town Holdings for 1889, and to the evidence on which the Report was founded. A digest of the evidence was published at the time by Cassell & Co. Ltd., in three slender volumes, and we were able from these volumes to give the substance of it (32 SOL. J., 434; 33 *ibid.* 672). The leasehold system is prevalent in the Metropolis, and certain modern towns, such as Eastbourne and Southport, have been developed under it; and so have the suburbs of Birmingham. But the freehold purchase system is by far the most common, and, subject to certain exceptions, is almost universal in the Northern, Midland and Eastern Counties. The advocates of leasehold enfranchisement have, therefore, had London chiefly in view, and they have alleged that the leasehold system fosters bad building; keeps houses dilapidated towards the close of the lease; raises rents; involves confiscation at the end of the term; leads to covenants of a harassing and vexatious nature; is not the result of free contract; and discourages thrift in the working classes. The object of the compilers of the Digest of Evidence was to refute these allegations, and to show that the leasehold system was advantageous both to builders and to occupiers; and while the statement was admittedly *ex parte*, the evidence seems to have been presented fairly. The main point in defence of the system was that the control of the landlord means that house-property is in general in better condition than where areas are developed on the freehold system, and the Committee reported to this effect. They did not think that enfranchisement would on the whole have much effect in improving the quality of the houses built nor would it lower excessive rents; while, on the other hand, the oversight of the ground landlord on well-managed estates was often beneficial. But it was allowed that the power of acquiring the fee simple would in many cases encourage habits of thrift among the working classes, and would also promote trade improvement. While, however, the Committee did not recommend any general leasehold enfranchisement, they suggested that a system of local enfranchisement might be tried in places where there was a demand for it, and they recommended that religious bodies should have power to purchase the freeholds of their chapels. This last recommendation was carried into effect by the Places of Worship (Enfranchisement) Act, 1920.

The Defects of the Leasehold System.

APART FROM the objection that at the end of the term the property, with all improvements effected by the lessee, goes back to the lessor, the particular objections made by Mr. SAW, are that there is no relief against forfeiture for assigning without the consent of the lessor: that, especially under existing circumstances, lessees are put to great expense for dilapidations, and that where sums on this head are recovered by the lessor, there is no obligation on the lessor to expend the money on the property: that reversion duty, which diverted to the State a part of the lessor's windfall, has been abolished; and that leases for lives are a very uncertain and oppressive form of tenure. The soundness of the first objection is admitted by the inclusion in the Law of Property Bill of clause 78, which extends s. 14 of the Conveyancing Act 1881, to covenants against assignment. This will get rid of the unfortunate decision in *Barrow* v. *Isaacs* (1891, 1 Q.B. 417), but will still leave open in any particular case whether consent is improperly withheld—a matter which is a fruitful source of litigation. Covenants to repair and yield up in repair may, no doubt, be burdensome on the lessee, but they seem to be a necessary incident of the leasehold system; at the same time, they may result as *Joyner* v. *Weeks* (1891, 2 Q.B. 31) showed, in simply putting money into the lessor's pocket. The evils of leases for lives were admitted by the Select Committee on Town Holdings, and their commutation into fixed terms was advised. In the Law of Property Bill, provision is made for prohibiting such leases in the future (see Schedule 15, clause 7 (3)), but there seems to be no provision for commutation of existing leases, unless they are perpetually renewable. As to reversion duty, we need say nothing; its history is well known. In principle it had much to recommend it. In practice, the courts knocked the bottom out of it and the Legislature thought it easier to end than mend it. But perhaps the last has not been heard of the matter. We should add that the Select Committee made some very moderate recommendations for compensation for improvements, but they did not propose to give the town dweller the same protection as in agriculture, or to deal with the question of compensation for goodwill attached to business premises.

Effects and Defects of the Rent Restrictions Act.

ONE OF THE most interesting of the many valuable papers read at the Scarborough Meeting was Mr. E. A. ALEXANDER'S lengthy summary of the effects and defects of the Rent Restrictions Act, as interpreted in the courts during the last twelvemonth. He traced the passing of the Acts to the existence of a "house famine," and that "house famine" he again traced back to early Victorian conditions. This seems rather doubtful. As a matter of fact small houses were very plentiful in England ten years ago; the estate agents who managed the small suburban properties all round London had always on their books a large percentage of empty houses. The financial uncertainties arising out of the land taxes imposed by Mr. LLOYD GEORGE'S celebrated Budget of 1910, perhaps, were the first check to this fortunate state of affairs. Builders feared, rightly or wrongly, that their

profits would be classed as "unearned increment," and there was a sudden slump in the building of new houses. The next difficulty arose from the great increase of population in the Metropolis and munition areas during the war: this caused acute local shortage. Then, with the heavy burden of increased prices, and the ruin of the prosperous upper-middle class at the end of the war, there followed a vacating of large houses and a demand for small ones by people who had not previously lived in cottages or flats. The servant difficulty, too, increased this tendency for everyone to seek a smaller and cheaper type of dwelling. No doubt, too, the restrictions on building caused by D.O.R.A. regulations helped not a little to increase the shortage. Then the rise of wages, and the diminished output of the artisans in the building trades, increased the cost of houses, and so restricted building. All these causes, we fancy, led to the "house famine," and are of recent growth. It is right to add that in the introductory remarks which precede his analysis of the operation of the statute, Mr. ALEXANDER makes a very full allowance for these factors.

A Novel Remedy for House Famine.

MR. ALEXANDER'S PAPER contains a suggestion of its own which, we think, is rather novel. "The obvious policy for the Government to adopt," he says, "was to let rents find their own level, and to impose a tax on excess rents. Such a tax (being a tax on income, not on industry) would have had none of the evils of the excess profits duty; it would have produced . . . some hundreds of millions of revenue; it would probably have reconciled the working classes to largely increased rents, although there would have been grave discontent if the whole of the excess rents had remained in the owner's pocket . . ." This is a very interesting suggestion, and deserves consideration, but we are inclined to doubt the hypothetical results attributed to it by its author. Small houses being a monopoly, rents would have jumped to 300 or 400 per cent., like clothes and furniture; indeed, where the Act did not apply, as in the case of furnished lettings, this very result actually followed in 1918 and 1919. The artisan's cost of living would have been immensely increased, and still higher wages would have been demanded; this would have increased prices and cost of production to the breaking-point even sooner than has actually occurred. And the recipients of small fixed incomes would have suffered even more than they have done as the result of increased cost of living. On the whole, while the policy of the Rent Restriction Acts has its unhappy side, it seems to have saved the situation for the time being. The return to true economic rents can come about gradually; the Rent Restriction Act, we fancy, when it expires in 1923, will be renewed with modifications which allow of a gradual increase in the statutory rental. With much of the criticism in Mr. ALEXANDER'S paper we are in agreement; but, for all that, the statute strikes us as a necessary evil which could scarcely have been avoided. It was a *tabula in naufragio*.

An Unexplored Province of Law.

Dr. LESLIE BURGIN'S paper, entitled "The Rules of English Law applicable to Commercial Transactions that determine which of two innocent parties is to suffer loss, and necessity of calling the attention of articled clerks thereto," explores a field of law into which text-book writers have not greatly ventured. As a matter of fact the common law did not attempt to apportion loss as between two or more innocent parties; if A suffered damage he had to bear it unless he could show either that the loss was due to a tort of B, or that C had expressly or impliedly contracted to indemnify him against it, or that a statute gave him a remedy against D. Apart from tort, contract, or statute, A had no remedy against anyone. The only exception, if it be one, was the rule as to general average and petty average recognised by the mercantile law; and even this can be explained as a form of mutual insurance amongst all the parties to a marine adventure, created as an implied contract by the mutual considerations arising out of the contribution each makes to the venture. But the common law and their equity as the [more] convenient tribunal went a little further and set up rules as to contribution and indemnity, which certainly do something to equalise losses suffered by parties who have been neither negligent nor unconscientious. But no binding decision has ever yet gone so far as to say that of two innocent parties, the one who could have prevented the loss must indemnify the other; hence there must be some negligence or laches or other overt act before a court will order A to indemnify B.

Commercial Arbitration and the Commercial Court.

DR. JACKSON'S PAPER on "Commercial Arbitration and the Commercial Court" may also be commended to the thoughtful practitioner. Dr. JACKSON conceded at the outset that, in the case of highly technical questions of commercial usage, the only reasonable tribunal is that of a lay or expert arbitrator. But he points out that, in other cases, one of the results of extra-judicial arbitration is that the awards of arbitrators are apt to be quite opposite to the rules of law as set out in judgments and decisions; this he rightly regards as unfortunate. Perhaps, however, he exaggerates its occurrence. The paper summarizes in an interesting way a great deal of valuable experience of the working of arbitrations in actual practice.

Waiver by Statutory Accceptance of Rent.

IN A RECENT article with the above heading (65 SOL. J., 821) we discussed what we described as "a question of much theoretical difficulty" which has come before the courts in three reported cases arising under the Rent Restrictions Act, 1920, as well as in a number of cases arising under earlier Acts. When an ordinary tenancy becomes converted into a statutory tenancy by the operation of a notice to quit served by the landlord, the new tenancy is subject to the rent and conditions of the original tenancy so far as applicable: Rent Restrictions Act, 1920, s. 15 (1). The landlord cannot get rid of the tenant except by an order of court for recovery of possession in one of the cases provided for by s. 5 of the Act; of course, breach of a condition involving forfeiture is one of those cases (*ibid.*, s. 5 (1)). Now the normal rule that forfeiture is waived by acceptance of rent after notice of the breach is based on the theory of a voluntary election by the landlord to accept the benefits arising out of the tenancy; he is, therefore, compelled to accept likewise its obligations, for he cannot both approbate and reprobate. But no such freedom of election is conferred upon him in the case of statutory tenancies, for—if a breach involving forfeiture occurs—he cannot even then be certain that the court will make an order for possession; the judge may think it "unreasonable," to make an order and may, in the exercise of his discretion, refuse it. For this reason, since the acceptance of rent is practically compulsory, the King's Bench has in two recent cases refused to treat such acceptance as waiver of forfeiture: *Davies* v. *Bristow* (1920, 3 K.B. 428), and *Town Properties Development Co. Ltd.* v. *Winter and another* (37 T.L.R. 979). But in a third case, *Hartell* v. *Blackler* (1920, 2 K.B. 161), the opposite view was taken by another King's Bench court, although the point was not in terms raised. The authority of the two first-named cases is supported by a number of decisions under the earlier Acts, which will be found collected and commented on in Mr. WILKINSON'S text-book on the Rent Restrictions Act, at p. 40. Now it so happens that the Rent Restrictions Act of 1920 itself contains a clause, s. 16 (3), which was not in the earlier Acts of 1915 and 1919 and which is here relevant. Section 16 is headed "Minor Amendments of Law," and the third of its three sub-sections runs as follows: "Where the landlord . . . has served a notice to quit on a tenant, the acceptance of rent . . . for a period not exceeding three months from the expiration of the notice shall not be deemed to prejudice any right to possession . . ." A correspondent, whose letter we printed recently (65 SOL. J., 831), calls attention to this sub-section and suggests that, on the principle of *inclusio unius, exclusio alterius*, the provision excluding waiver by acceptance for a period not

exceeding three months must mean that waiver is not excluded if the period during which rent is accepted exceeds three months. This view is, in fact, discussed in Mr. WILKINSON'S book and rejected on the ground that the earlier decisions are still in force as regards the acceptance of rent for a period not covered by s. 16 (3); and therefore we did not consider it necessary to refer to this proviso. The whole matter, however, is one of great doubt. It has since occurred to us that there may be some connection between the period of three months fixed by s. 16 (3) and the similar period of three months' notice to quit, which, by virtue of s. 15 (1), the tenant must give to the landlord where the original tenancy was continuous and fixed no period of notice. This consideration reinforces the view suggested by our correspondent, and, we think, it would be unwise of any client who intended to institute proceedings for recovery to accept rent for a longer period.

Nuisance to an Uninvited Person.

IT IS A little curious that a police constable, although entering premises in the course of his duty, may have to do so "at his own risk"; but such is the decision of a Divisional Court in *Great Central Railway Co.* v. *Bates* (1921, W.N. 269). The point was this. A police constable, in the special railway service, having by statute all the ordinary powers and duties of a constable, was patrolling a dock area after dark. He noticed that the warehouse door of the defendant was partly open, and to see if all was right, he entered. He fell into an unfenced sawpit inside and was injured. His employer, of course, paid the statutory compensation under the Workmen's Compensation Act, 1906, and then, under the provisions of s. 6 (2), took county court proceedings against the occupiers of the warehouse to claim an indemnity on the ground that negligence or nuisance, for which the occupiers were in law responsible, had caused the injury. Now, it is clear that, had the policeman been a person going into the warehouse either to transact business or with permission so to do, he could have claimed damages in tort; an invitee or licensee must receive warning of any special danger which they are likely to encounter on the premises: *Indermaur* v. *Dames* (1866, L.R. 1 C.P. 274). It is equally clear that a mere trespasser so injured cannot recover. But there is an intermediate class of persons, namely, those who have a legal excuse for going on the particular premises so that they are not trespassing, but who are neither "invitees" nor "licensees"; the duty towards the former (the invitee) being more stringent than that towards the latter (the licensee), but in both cases only arising when the person injured has either been invited, expressly or impliedly, to come for the transaction of business, or has been permitted to visit the premises for his own benefit. This class of person would seem to have no legal remedy, for no legal duty to safeguard them against defects or dangers inheres by operation of law in the occupier or owner of the premises. The Divisional Court, overruling the County Court Judge who heard the case in the first instance, took the view that a police constable, who enters premises as the reasonable result of an unfounded suspicion, is neither an "invitee" nor a "licensee" of the occupier, and so is disentitled to set up the rule of *Indermaur* v. *Dames* (*supra*), or otherwise to claim damages. Supposing, however, he makes an actual arrest of a convicted felon, the position might conceivably be different.

The Late Mrs. G. M. Thomson.

WE REGRET to see the announcement of the death of Mrs. GWYNETH MARJORY THOMSON, the wife of Mr. T. W. THOMSON, of Tewkesbury. The daughter of the late Canon BEBB, of Lampeter, she was a protagonist in the struggle for the admission of women to the legal profession, and in 1913 she brought an action against the Law Society for a declaration that she was entitled, as a "person" within the meaning of the Solicitors Acts, to be admitted to the examination of the Society. She failed both before JOYCE, J., and the Court of Appeal (*Bebb* v. *Law Society*, 1914, 1 Ch. 286), on the ground that women were disqualified for the profession of the law by inveterate usage, and that this disqualification was not removed by the Solicitors Act, 1843. How long, but for the war, the struggle would have gone on is matter for speculation. But the war came with its many resulting changes, and one was the breaking down of all sex barriers. Miss BEBB went to Oxford, where in 1911 she obtained a first-class in Honours in Jurisprudence. After her marriage she became a student at Lincoln's Inn, and in due course, no doubt, would have been called to the Bar. She was during the war energetic in public work. It will be greatly regretted that a career of such promise has been suddenly cut short.

The Acceleration of Remainders.

IN a well-known passage in POLLOCK AND MAITLAND'S History of English Law (Vol. II, p. 11), the authors refer to "that wonderful calculus of estates which even in our own day is perhaps the most distinctive feature of English private law." If and when the Law of Property Bill becomes law this calculus will cease to affect legal estates, but it will still apply to equitable interests and estates, and it appears that there will be little, if any, resulting simplification as to these. Hence it cannot be said that such a case as *Re Conyngham* (1921, 1 Ch. 491), which raised again the question of the acceleration of future estates by the cessation of a prior estate, is likely to lose interest. The question, it will be remembered, has frequently been before the courts, and without going back to the early authorities, there are *Carrick* v. *Errington* (1728, 2 P. Wms.; 5 Bro. P.C. 391) and *Hopkins* v. *Hopkins* (1738, Cas. temp. Talb. 44; 1 Atk. 581) at the beginning of the series, and *Re Scott* (1911, 2 Ch. 374) and *Re Willis* (1917, 1 Ch. 345) towards the end; and it has been learnedly discussed by conveyancers as appears from the articles in these columns by the late Mr. CHARLES SWEET (61 SOL. J., pp. 573 *et seq.*) and by Mr. F. E. FARRER (*ibid.* pp. 608 *et seq.*).

As an example of the limitations in question, we may state those in *Re Scott*—to A for life, with remainder to his sons successively in tail male, with remainder to B for life, with remainders over. A disclaims his life estate at a time when he has no sons, there being thus a gap left in the limitations. The result may be, either to accelerate B's estate for good and all, thus destroying the contingent remainder to the sons of A; or to accelerate B's estate temporarily, leaving it to be displaced on birth of a son of A; or not to accelerate it at all, but to leave the intermediate income to go, if the limitations arise under a will, to the heir-at-law of the testator. The first possibility is removed by the Real Property Act, 1845, and Contingent Remainders Act, 1877, which saved contingent remainders from failing by the destruction of the particular estate which supported them, so that practically the question is whether the intermediate income goes to the next vested estate by way of temporary acceleration, or whether it results as undisposed of to the estate of the testator, or to the settlor; and this may depend on whether the limitations are legal or equitable, and whether, if legal, they take effect as strict common law estates, or by way of springing or shifting use or executory devise.

Carrick v. *Errington* (*supra*) was a case where an estate for life failed by reason of the statutes then in force against Papists. The settlor, EDWARD ERRINGTON, settled lands to the use of himself for life, remainder to his first and other sons successively in tail male, remainder to THOMAS ERRINGTON, a Papist, for life, remainder to trustees during his life to preserve contingent remainders, remainder to his sons successively in tail male, remainder to WILLIAM ERRINGTON for life, remainders over, with an ultimate remainder to the right heirs of the settlor. EDWARD ERRINGTON, the settlor, died without issue, and the life estate of THOMAS failed. The question was, who should take the income during the life of THOMAS, whether the heir-at-law of the settlor or WILLIAM, the next remainderman. It was urged for the remainderman that he could be let into possession *pro tempore*, but KING, L.C., said this would be making use of an extraordinary power of directing and displacing estates, which he could not take upon himself to do; and since letting WILLIAM into possession

might permanently cut out the sons of THOMAS, he awarded the intermediate income to the heir-at-law of the settlor as undisposed of, and this decision was affirmed in the House of Lords. It would seem, however, from subsequent comments on the case that the remainderman, WILLIAM, was really postponed by the intermediate estate of the trustees to preserve contingent remainders, and since no trusts of the income were directed, it resulted to the heir-at-law: see per Lord Hardwicke in *Hopkins* v. *Hopkins* (*ubi supra*, at p. 597); per YOUNGER, J., in *Re Willis* (*ubi supra*, at p. 375); and *Re Conyngham* (*ubi supra*, at p. 501). In fact, the legal estate was outstanding in a mortgagee (see 5 Bro. P.C. 391), but this seems to make no difference, the equitable estates under such circumstances following strictly the analogy of legal estates: *Re Conyngham* (*ubi supra*, p. 501).

It is unnecessary to set out the limitations in *Hopkins* v. *Hopkins* (*supra*). These arose under a will by which the legal estate in fee simple was devised to trustees, so that the beneficial limitations were equitable. In the first suit in which the will came before the Court, the limitation in favour of unborn children was treated as an executory devise, and under the terms of a proviso dealing with income the intermediate income was given to the heir-at-law as undisposed of; in the second suit, which was brought after the circumstances had been changed by the birth and death of a son, it was held that the estate in the will trustees was sufficient to preserve the contingent remainders. As pointed out to the Court of Appeal in *Re Conyngham* (*ubi supra*, p. 502), the case is no authority on the question now raised.

In *Re Scott*, the limitations, which are shortly stated above, were legal, and WARRINGTON, J. held that on disclaimer of his estate by the first life tenant, before he had any son, the income till birth of a son did not go to the next life tenant, but was distributable as part of the testator's estate. The will contained a gift of residue, and the income passed under this gift. WARRINGTON, J. based his judgment upon the principle of *Carrick* v. *Errington* (*supra*), but he had to get over the difficulty that, in that case, an estate to trustees to preserve contingent remainders was interposed; in the case before him there was not. But since the Contingent Remainders Act, 1877, a contingent remainder is saved from destruction without any estate in trustees, and it can take effect as an executory limitation. The effect, he held, was to put the limitation before him on the same footing as if there had been trustees to preserve contingent remainders. Thus, as in *Carrick* v. *Errington*, the next life estate was not accelerated; if it had been, the contingent remainder would, it was considered, have been finally excluded, since a common law legal estate could not shift back again; and the intermediate income went as undisposed of. But this result was not acquiesced in, if we understand rightly, by either Mr. SWEET or Mr. FARRER, the former thinking that the contingent remainder should have been treated as an executory devise so as to let in the next estate till the devise took effect, and the latter, that the interim income was really secured for the next tenant for life by s. 8 of the Real Property Act, 1845. In fact, he considered that that section had given effect to both the recommendations on the subject of the Real Property Commissions in their Third Report, (1) that contingent remainders should not be liable to destruction; and (2) that interim profits should, in the absence of a direction to the contrary, go to the person entitled to the next vested estate. His full arguments, in addition to his articles in these pages referred to above, were given in 32 L.Q.R., pp. 83, 392; and for his discussion of *Carrick* v. *Errington*, see *ibid*, pp. 400 *et seq*. We would add that the technical effect of the interposition of the estate of the trustees after the first life estate was to make that the next estate in possession on the destruction of the life estate, so that the subsequent estate could not be accelerated into possession. Mr. SWEET took the view that s. 8 of the Act of 1844 gave effect only to the first of the Commission's recommendations.

In *Re Willis* (*supra*), YOUNGER, J. referred to Mr. FARRER's articles in the *Law Quarterly Review*, but did not find it necessary to consider *Re Scott*. The limitations in *Re Willis* were equitable, and in determining their effect the intention of the testator was to prevail. This intention, in his view, was to give the intermediate income to the person next entitled in the prescribed order of succession. It was said to be shown by the manner in which the testator had parcelled out the entire estate. The present case of *Re Conyngham* (*supra*) proceeds on the same lines. The estates were equitable in the sense that they were trust estates, and so were subject to more elastic treatment than estates in an equity of redemption (as in *Carrick* v. *Errington*, *supra*), which strictly follow the law (1921, 1 Ch. p. 501); and the question, it was pointed out, was whether the testator had made a complete disposition of the rents of the estate during the period of suspension. As regards to this, it was held that, as in *Re Willis*, the successive beneficial interests were given in terms which exhausted the entire interest, leaving no income undisposed of for the heir-at-law. We doubt, however, whether this really affords any true guide to the intention of the testator under the circumstances. In every case there is the same complete carving out of the entire beneficial interest, and the reason on which the Court of Appeal based their decision seems to do no more than add another subtlety to a subject already overloaded with subtleties.

No doubt the proper course is to go back to the second recommendation of the Real Property Commissioners of 1833 cited above, and either by judicial decision or statute to give the interim income to the person next entitled, whether at law or in equity. We have not noticed that the Law of Property Bill contains any such provision, but the matter deserves attention.

The Computation of Excess Profits.

A point of great importance and interest was the subject of a majority decision by the House of Lords in *John Smith and Son* v. *Moore* (1921, 2. A.C., 13). The question decided related strictly to the assessment of profits for purposes of Excess Profits Duty, but the Court in fact applied to the case a decision laid down thirty-four years ago in an income tax case, namely, *City of London Contract Corporation* v. *Styles* (1887, 2 Tax Cas., 239), so that the principle is one of general application. The case, too, resulted—as so many Revenue appeals do result—in many interesting differences of standpoint appearing in the separate judgments of the Law Lords, so that for this reason also it has a certain value; it is always useful to note how by different paths different judicial minds will arrive at the same result. In this case Lords HALDANE, CAVE and SUMNER formed the majority, while Lord FINLAY dissented in an extremely able judgment. Again, Lords HALDANE and SUMNER based their decision on a ground of general principle, whereas Lord CAVE put his on a ground not applicable outside the Excess Profits Duty provisions of the relevant Finance Acts. For all these reasons a consideration of the point may be useful here.

The facts which gave rise to the case are of fairly common occurrence. The person assessed had succeeded, under his father's will, from the latter's death in March, 1915, to his father's business as a shipping and coal agent. The father, by his trust disposition and settlement (the case was a Scots appeal from the Court of Session), had divided his property among his relations, leaving his son the business. The settlor provided that his son was to account for the value of the assets, other than goodwill, comprised in the business; he was to pay this value to the estate for distribution in accordance with the dispositions of the will. In valuing the assets of the business for this purpose, the accountants took into consideration the fact that these assets included the benefit of certain running coal contracts, the profit on which would almost necessarily be large, since the owners had to supply coal at a pre-war price

much lower than the holder of the contracts could be sure of obtaining. The accountants therefore valued the contracts at £30,000, and the son had to pay this sum by way of purchase price for the assets. As a matter of fact, a profit of more than £90,000 was actually made on the contracts. And, of course, the son, when assessed to excess profits duty as owner of the business, had to pay duty in respect of those profits. But he claimed to deduct from the £90,000 or so of actual profits the sum of £30,000 paid by him as purchase money for the benefit of the contracts. And the simple question before the House of Lords was whether or not he was entitled to make the deduction.

The arguments and judgments on this point are of exceptional interest, because the economic distinction between "fixed" and "circulating" capital was raised, and, in fact, was the ground of the Court's decision. If the contracts were "fixed" capital, it was common ground that the purchaser of the business could not deduct the price paid for them from his profits in order to ascertain income; the purchase price of "fixed" capital is capital expenditure, not annual expenditure. But if the contracts were "circulating" capital, analogous to raw materials or fuel, then the amount spent on purchasing them is annual business expenses and can be deducted. The House, by a majority, took the view that it was "fixed" capital, and that therefore the £30,000 could not be deducted in the computation of the profits. Certainly, at first sight, this seems a surprising result. The contracts in question were short contracts running only over a period of a little more than a twelvemonth. The essence of "fixed" capital strikes the ordinary man as being the fact that it lasts in perpetuity (subject to repair and renewal), *e.g.*, the land, buildings, machinery of a factory. The essence of "circulating" capital is that it has a short-term existence, being purchased only in order that it may be disposed of at the earliest possible moment. Had the business been that of a jobber dealing in stocks, it is clear that the "contracts" would have been circulating capital and treated accordingly. But since he was a coal-agent, who sold coal, not coal-contracts, the latter became "fixed" capital.

The logic of this somewhat surprising result is not quite so obvious as it might be, and therefore it may be useful to indicate briefly the reasons given for arriving at it by Lords HALDANE and SUMNER. Nothing of any consequence turns on the wording of the statutory provisions, namely, Finance (No. 2) Act, 1915, s. 38 (1), (2), s. 39, s. 40 (1), (2), s. 45 (2), Schedule IV, Part I, rule 1, and Part III; and Income Tax Act, 1842, s. 100, Schedule D, First Case, rule 30. The net result of all these complicated sections is a simple one as to which no one has ever seriously suggested any doubts; namely, that in computing the profits of a business, deductions for the necessary expenses of carrying it on can be made, but not deduction for new capital expenditure, or for the original expense of purchasing the business or its plant (except within such narrow limits as may be allowed in special cases by special rules). The practical difficulty arises when, in a border line case, one tries to distinguish between these two forms of expenditure. Generally speaking, it may be said that profits arise in one of two alternative ways. Either they consist of the difference between the annual income and the annual running expenses (as distinct from new capital expenditure) of a business, or else they may be obtained by valuing the assets at the end of a period of time, and also at the beginning of that period; the difference between the two consists of "profits"; but not necessarily of "profits" assessable to Income Tax or Excess Profits Duty. In the second case, if the increased value of the assets is due to an increase in the value of the "fixed" capital, then we have merely "appreciation of capital," not profits at all: but if the increased value is imputable to an increase in the value of materials or saleable commodities, then it is "profit," not appreciation of capital. Here, again, the distinction between "fixed" and "circulating" capital is important. A luminous discussion of the difference will be found in the judgment of Lord HALDANE in the present case, at pp. 17-20. The distinction, however, had already been fully drawn in *J. & M. Craig (Kilmarnock) Ltd.* v. *Inland Revenue Commissioners* (1914, S.C. 338-348), and in *Farmer* v. *Scottish North American Trust* (1912, A.C. 118, 125, 127).

The view taken by Lords HALDANE and SUMNER was briefly this: They went back to ADAM SMITH'S "Wealth of Nations" for a definition of the distinction between "fixed" and "circulating" capital in its widest and most general terms. They found it to be as follows: "Fixed" capital is property which the owner of the business wishes to keep in his own possession as a means of earning continuous profits; whereas "circulating" capital is property he means to turn into profit by selling at the earliest possible moment. Now the coal contracts here were simply a right to the delivery of so much coal at a certain price. This coal the owner of the business had no desire to keep; he wanted to get rid of it at a profit. But he *did* desire to keep the contracts as a means of getting the coal, just as much as he wanted to keep his office premises or his machinery. The fact that the contracts were short-term contracts and soon expired does not affect this, any more than the character of a factory would be affected by the accident that the premises are leasehold, not freehold; so long as the contracts were in existence, the owner wanted to keep them, not to part with them. Therefore they were "fixed" capital, like his machinery or premises, and their purchase price was "capital expenditure" not to be deducted from gross profits in the computation of net profits.

The reasoning of this argument is certainly simple and lucid. But that it is not altogether convincing in logic is shown by the fact that Lord FINLAY, in an able argument, dissented from it altogether, and that Lord CAVE supported the majority on a different ground. Lord FINLAY, indeed, clearly considered that the coal contracts were simply "constructive coal," and should be treated as if they were coal, which is clearly "circulating" capital. And Lord CAVE limited his decision to the fact that the business was a "continuous" one, and that the father (had he lived) could not have made any deduction—he did not pay anything for the contracts. This latter view seems the safest basis for the actual decision.

The New Statutes.

UNEMPLOYMENT INSURANCE ACT, 1921 (11 Geo. 5, c. 1) AND UNEMPLOYMENT INSURANCE ACT (No. 2), 1921 (11 Geo. 5, c. 15).

The object of both these statutes is to make some amendments of the Principal Act, namely, the Unemployment Insurance Act, 1920. That statute, the Unemployment Insurance (Temporary Provisions Amendment) Act, 1920, and the two present Acts, may be cited together as the Unemployment Insurance Acts, 1920 and 1921. The amendments are not of great importance. The first Act substitutes twenty shillings for men and sixteen shillings for women where the Principal Act had fixed sixteen and twelve shillings respectively; those original figures are now restored by the second Act "until the expiration of the deficiency period"—which, unfortunately, seems likely to last an indefinite time under present economic conditions. The two statutes jointly contain also a number of provisions as to the mode of deducting contributions, the benefits to be received, Treasury advances, special schemes, and disqualifications; but as new legislation is certain in the near future to replace a system which has apparently broken down, and as Parliament has been called for 18th October to discuss new legislative proposals, it would be a waste of space to go into what are almost certainly transient details.

THE GERMAN REPARATION (RECOVERY) ACT, 1921 (11 Geo. 5, c. 5).

This statute has been enacted in order to provide machinery for applying part of the purchase price of German goods imported into Britain towards the discharge of that country's reparation obligations under the Treaty of Versailles. The general scheme is a simple one. Wherever German goods are imported into the United Kingdom, the importer must pay to the Commissioners of Customs and Excise an *ad valorem* duty on the goods, fixed by the Treasury, but never exceeding 50 per cent. (s. 1). The moneys so obtained are to be applied towards the German indemnity (*ibid.*). Various other sections provide for the

ascertainment of goods to which the Act applies, the appraisement of their value, and certain modifications of the general rule in the case of goods imported to be re-exported. To lawyers the most important clause is probably s. 5 (1). This gives to a person who has entered into a contract for import before 8th March, 1921, which makes him liable to accept bills of exchange or make advances in respect of import, power to apply to the High Court for (1) variation, or (2) suspension, or (3) annulment, or (4) amendment with consent of both parties, or (5) stay of proceedings for enforcement of such contract. Those or any of them the Court may do on such conditions as it thinks fit.

THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT, 1921 (11 Geo. 5, c. 7).

This far-reaching statute is likely to be of very considerable importance to lawyers in the future. The Law Society, it will be remembered, made unavailing opposition to it during its passage through Parliament on account of its bureaucratic and despotic procedure. The main purpose of the statute is to provide general statutory machinery for the setting up of special Parliamentary Tribunals of Inquiry without the necessity of getting a Special Act in each case, as has hitherto been necessary. In other words, its function is somewhat like that of the Lands Clauses Acts in respect of Compulsory Purchase. Wherever Parliament authorises the appointment of such a tribunal, it is to have the powers conferred by this General Act. Such a tribunal may be set up when certain conditions precedent are satisfied, namely:—

(1) A resolution of both Houses of Parliament desiring inquiry into a "definite matter described in the resolutions as of urgent public importance";

(2) The appointment of a tribunal in pursuance of the resolution either by (A) His Majesty, or (B) a Secretary of State;

(3) An instrument of appointment of such tribunal which shall apply to it such of the "powers, rights and duties" conferred by the statute as it is intended to possess (s. 1 (1)).

The matters in respect of which powers are conferred are as follows:—

(a) The attendance and examination of witnesses;

(b) The compulsory production of documents;

(c) The issuing of a commission, subject to Rules of Court, to take evidence abroad (*ibid.*).

The sanction for securing obedience to the directions of the tribunal in these matters is a certificate of the offence by the Chairman to the High Court, followed by a summary trial and punishment of the offender by that court (s. 1 (2)).

The tribunal can exclude the public from its hearings when in the public interest it deems this expedient (s. 2 (*a*)). It can allow persons who are not barristers or solicitors to appear on behalf of parties, and conversely can forbid the representation of any party by a legal advocate (s. 2 (*b*)). The obvious interference with the right of self-defence involved in this last provision was the subject of unsuccessful representations to the Government by the Law Society during the hasty passage of the Bill.

THE MINISTRIES OF MUNITIONS AND SHIPPING (CESSATION) ACT, 1921 (11 Geo. 5, c. 8).

This statute is not of great importance, but it should be noted that it provides for the transfer by Order in Council made under s. 6 of the Ministry of Munitions Act, 1915, to some other Government department of "property, rights and liabilities" held by the Ministry of Munitions or the Ministry of Shipping on its termination by an Order in Council. Orders were made accordingly on 24th March and are printed 65 SOL. J. p. 609.

THE CAPTIVE BIRDS SHOOTING (PROHIBITION) ACT, 1921 (11 Geo. 5, c. 13).

THE PROTECTION OF ANIMALS AMENDMENT (1911) AMENDMENT ACT, 1921 (11 Geo. 5, c. 14).

THE IMPORTATION OF PLUMAGE (PROHIBITION) ACT, 1921 (11 Geo. 5, c. 16).

These three statutes may be mentioned together, since they deal with similar subject-matters. The first penalizes by fine and imprisonment the shooting of birds artificially liberated from traps and other contrivances. The second removes from the category of "hunted" animals (which may still, under our law, be treated with cruelty) animals confined in an enclosed space without reasonable chance of escape. The third regulates the importation of the plumage of birds killed for the sake of adornment.

The Society of Genealogists of London, 5, Bloomsbury-square, have discovered that the vaults of Somerset House contain apprenticeship books dating from 1711. These registers will be of great assistance to students of biography and genealogy, as they will fill many missing gaps in pedigrees. The society has already started an alphabetical digest of these records.

Res Judicatæ.

Conveyancers' Devices.

The conveyancer who wishes to drive a coach and four—or a motor char-a-banc—through a will should find encouragement in *Re Hinckes* (1921, 1 Ch. 475), where a device to defeat a shifting clause attained triumphant success. Counsel, said Lord Sterndale, M.R., in his judgment, had spoken of the provisions of the deed with that enthusiasm with which a painter speaks of a masterpiece of art, or a musician of a masterpiece of music. The object to be attained was simple enough. Under a settlement of 1865, the Foxley estate was limited to an eldest son George for life, then to his son in tail, then to the next son Harry for life and his son in tail, with remainder over. Ralph was George's eldest son. Under the will of a testatrix, who died in 1874, the Hinckes estate was limited to Harry for life, with remainder in the events that happened to Ralph for life, remainder to Ralph's sons in tail, with remainders over. The will contained a shifting clause, under which, if any child or remoter issue of George or Harry became entitled in possession to the Foxley estate or the bulk of it, the Hinckes estate was to go over as in the clause mentioned. In 1895 Harry died without issue, and Ralph, who was a bachelor, became tenant in possession of the Hinckes estate. In 1896 the greater part of the Foxley estate was resettled to such uses as George and Ralph should appoint and in default of appointment to George for life, remainder to Ralph for life, with power of appointment to his children, remainders over. The Hinckes estate had turned out to be the more valuable, and to avoid the probable event of Ralph becoming entitled to the Foxley estate, and losing the Hinckes estate under the shifting clause, George and Ralph in 1900 appointed the Foxley estate to uses under which Ralph became entitled to a rent-charge which in effect exhausted the income, and a power of revocation was reserved. In 1909 Ralph married and there were two children of the marriage. In 1919 George died and Ralph became entitled to the rent-charge out of the Foxley estate. It was contended for the remaindermen entitled under the shifting clause, that the appointment of the rent-charge was a mere device to defeat the clause, and that, in substance, Ralph had become entitled to the Foxley estate. But the Court of Appeal, affirming Astbury, J. (1920, 2 Ch. 511), while recognising that Ralph had been for all practical purposes put in the same position as if he had been owner for life of the Foxley estate, held that the device was effectual. He was only the owner of a rent-charge and not entitled to possession of the estate or to the receipt of the rents or profits. "I do," said Warrington, J., "look at the substance, but, in order to ascertain the substance, I must look at the legal effect of the bargain which the parties have entered into." The case is a great encouragement to the ingenious conveyancer, but it is still permissible to speculate, as an intellectual pastime, on what is substance and what is shadow.

Negligence in the Course of Duty.

A recent English case which concerns the rule of *Respondeat Superior*, is that of *Jefferson and others* v. *Derbyshire Farmers Ltd.* (1921, 2 K.B. 281). In this interesting little case a very short point, omitting the usual complications, arose. Here the plaintiff was the owner of a garage. He leased it to a firm of motor engineers. They gave to a third party, the defendants, a licence to use the garage for the stabling of their motor lorries. The defendants employed a boy in the garage. This youth, one day, while drawing petrol from a drum into a tin, was guilty of the reckless folly of striking a match to light his cigarette—an action, the foolhardiness of which will be obvious to everyone who has seen the precautions taken in the services, not always successful, to prevent motor-machine-guns, motor-launches, and airships from being blown up as the result of smoking in the neighbourhood of petrol. The natural result followed the boy's rash act: the petrol caught fire and the garage with its contents was destroyed. Obviously, the boy was responsible to the plaintiffs for his negligence, but the defendants, his employers, argued that the act was so dangerous and wantonly reckless as to amount to a repudiation of the relation of employer and employee between their servant and themselves; in fact, the accident resulted from a frolic of his own, for which they were not responsible. In the days before the somewhat revolutionary decision of *Lloyd* v. *Grace, Smith & Co.* (1912, A.C. 716), this plea might have been arguable. But the more extended view of *Respondeat Superior* adopted in that leading case has rendered most of the old learning on this point obsolete. It is now almost hopeless to disclaim liability for an act committed by a servant in the apparent course of his employment, and the Court of Appeal affirmed here the liability of the master to the plaintiff.

Costs and Verbal Agreement to Arbitrate.

The leading moral of Mr. Justice Petersen's decision in *Fleming* v. *Doig* (*Grimsby*) *Limited* (38, Rep. Pat. Cas. 57), although the case is reported as a point of patent law, would seem to be that where two parties make a *verbal* agreement to go to arbitration in certain events, the court cannot find any equity which will justify it in treating the verbal agreement as equivalent to a "written submission," and therefore cannot stay the case on the ground that the parties have agreed to oust the jurisdiction of a judge in favour of that of an arbitrator, under the Arbitration Act, 1889, ss. 13 and 14. The facts, however, are rather interesting and probably of fairly common occurrence. The owner of a patent entered into the service, as their technical adviser, of a firm of manufacturers. By a verbal agreement between the parties he gave them a licence to make and use his patent on paying him a reasonable royalty; and it was verbally agreed that differences should be the subject of arbitration. In fact, differences did arise, and litigation followed. The judge held that the case could not be sent to arbitration against the will of the defendants, but took the nearest course open to him: he sent it for an enquiry, under s. 13 of the Arbitration Act, to the Official Referee. It is interesting also to note that, since the defendants' objected to arbitrate, the learned judge thought it right to make them pay the plaintiff's costs up to the enquiry in any event. The actual costs of the enquiry were reserved pending the report and finding of the Official Referee.

Bonâ Fide Mistake by Servants of the Crown.

A curious point of practice in cases against the Crown arose in *The Bernessi and the Elve* (1921, 1 A.C. 458). Two neutral ships bound from a French Colonial Port to Amsterdam with cargoes of ground nuts, and each possessing a French Government permit for the shipment (an *acquit à caution*), were stopped by a British cruiser towards the end of the actual hostilities in the late war and taken into Kirkwall. Such a seizure could be justified on either of two grounds, either an actual Order in Council authorising such seizure, or, failing that, reasonable suspicion of contraband or other hostile intent, justifying a stoppage and search in port. Here, no actual Order in Council justified the seizure, but the captain of the cruiser *bonâ fide* believed that the second Reprisals Order (Order in Council of 16th February, 1917), covered the case. That Order, however, only applied (so far as revelant) to a ship which started from a British or Allied port for a destination providing access to enemy territory, provided it had no clearance pass. The ships had not the British green clearance pass, but had the French, so that the seizure was not within the terms of the Order. As regards the second ground, the only ground of suspicion which could be suggested was that the ships did not possess the "green" pass: but, clearly, in view of the possession of a French pass and the port of origin, such suspicion was not reasonable. The owners of the vessels, one of which was sunk and the other damaged by enemy submarines while under detention, therefore were entitled to claim damages against the Crown in accordance with the usual practice of the Prize Court. In that court, we need hardly say, the common law maxim "The King can do no Wrong," is not applicable so as to bar actions *in detinue* against the Procurator-General for damage arising out of illegal acts of Crown servants or officers.

Reviews.

The English and Empire Digest.

THE ENGLISH AND EMPIRE DIGEST with Complete and Exhaustive Annotations. Being a Complete Digest of every English Case reported from early times to the present day, with Additional Cases from the Courts of Scotland, Ireland, the Empire of India, and the Dominions beyond the Seas, and including Complete and Exhaustive Annotations giving all the subsequent cases in which judicial opinions have been given concerning the English cases digested. Vol. VI. Bills of Exchange, Promissory Notes and Negotiable Instruments. Butterworth & Co.

The general plan and arrangement of the English and Empire Digest have by us on former occasions been described, and the work is now well-known to the profession. The present volume is devoted to the single title of Bills of Exchange and cognate instruments. The title is contributed by Eric R. Watson, already known as a writer on the subject, and Mr. Harry Geen, and has been revised by the Managing Editor, Sir T. Willes Chitty. But, as we have before explained, the actual labour of completion and arrangement is so great that, apart from the responsible editorial work, its production is only possible owing to the extensive organization which the publishers have established for the purpose.

The cases are arranged under twenty-five heads, of which we may mention, by way of example, Part II, Acceptance; Part X, Consideration; Part XI, Negotiation and Transfer; Part XIII, Liability of Parties; Part XVIII, Conflict of Laws; Part XX, Negotiable Instruments other than Bills of Exchange, Promissory Notes and Cheques; and Part XXV, Stamps. The initial question in regard to any branch of the law which, like Bills of Exchange, has been codified, is how far the prior decisions are to be regarded as still relevant. This, as is well known, was discussed in the *Vagliano Case* (1891, A.C. 107), and the passage from the judgment of Lord HERSCHELL which lays down the grounds for resort to the earlier decisions, is quoted at p. 13, with references to numerous cases in which that case has since been considered or referred to. The general principle is that the first step is to interpret the language of the Act and that an appeal to earlier decisions can only be justified on some special ground. But this notwithstanding, we gather that the policy of the editors of the Digest is to take no risks, and that all cases are included so as to be available if wanted. It would be useless to attempt to describe in any detail the contents of the volume. The reader will not fail to pick out easily the points which specially interest him. For instance, if he is interested in the general question of negotiability and how it is established, he can turn readily to the statement at p. 444 of *Crouch* v. *Credit Foncier* (L.R. 8 Q.B. 374), of *Goodwin* v. *Robarts* (1 App. Cas. 476), which by a cross-reference on the same page he will find at p. 437, and of the *Bechwanaland Exploration Co.'s Case* (1898, 2 Q.B. 658), also at p. 444, where it was decided that debentures might become negotiable by recent commercial usage. And the numerous annotations to these cases enable the reader to pass at once to later cases in which they have been considered.

But with all digests the question arises, how soon will the growing output of cases be too great a burden for the lawyer to carry. It is heavy enough here; it is still heavier in the United States; and in 1914 the Committee of the American Bar Association on Law Reporting and Digesting procured the passing of three resolutions on the subject, the first of which was: "That the increasing volume of the reported cases is a burden for which some relief must be found, both in the selection of the opinions reported and in greater brevity in the opinions themselves." We are not aware that this has had any practical results, and in a book we reviewed recently—"Training for the Public Profession of the Law" (65 SOL. J. 838)—emphasis is laid on the "stupendous increase in the volume of reported decisions." The number of volumes of reports is said to be over 10,000. Private enterprise in America attempts to grapple with and digest this huge mass of material—for the public authorities are supine—just as the Imperial and English Digest is now doing here, and as Mew's Digest has done for many years; but fortunately we have not fifty superior jurisdictions all contributing. But the countries which base their legal systems on case-law will have to consider how the burden is to be borne. So long ago as 1856 Sir Henry Maine spoke of "that frightful accumulation of case-law which conveys to English jurisprudence a menace of revolution far more serious than any popular murmurs."

Agricultural Holdings.

JACKSON'S AGRICULTURAL HOLDINGS. Being the Agricultural Holdings Acts, 1908-1921. With Introduction and Explanatory Notes and Forms. Together with a Manual on Tenant-Right Valuation. By W. HANBURY AGGS, M.A., LL.D., Barrister-at-Law. Fifth Edition. Sweet & Maxwell Ltd. 11s. 6d. net.

It was recognised in the House of Lords, when the Agriculture (Amendment) Bill was before it last session, that the Acts of 1908 and 1920, if read separately, left the law in hopeless confusion, and the only question was how this was to be remedied. We refer particularly to the debate on 19th April. Two courses were pressed on the Government: either to have a memorandum prepared, in which the whole law should be succinctly and clearly stated, or to have a codifying Bill at once introduced. It was rightly objected that a memorandum would be a mere series of *obiter dicta* on the part of the officials of the Ministry of Agriculture and would bind no one, and the Government were not prepared to pledge themselves to a Consolidation Bill. It was Lord Stuart of Wortley who pointed out to the House the practical solution of the difficulty in a passage which is interesting to text-book writers and their readers, and which we are glad to rescue from the cold shades of Hansard and transfer to the more congenial atmosphere of these pages:—

> "The explanation is that you never pass Acts of Parliament, even of the most complex and voluminous kind, without finding very soon (never very long afterwards) that the inexorable and infallible law of supply and demand, aided by the not less infallible and inexorable operation of the exigencies and necessitous state of what may be called the lower strata of the legal profession, cause to appear in the shop windows of Chancery Lane and Fleet Street, and the not much more romantic thoroughfare called Bell Yard, those useful little compendia of the recent additions to the legislative output, which enable you to see in one page, in a most convenient collation, all the necessary things, making reference most easy and enabling the reader to make himself fully acquainted with the legislative situation which has been produced.
>
> "That is a great mitigation. It is not certainly all that could be desired, because the things stated and displayed in these text-books are not, indeed, judicial decisions; but I submit that this mitigation of these evils arrives pretty soon and is very useful when it comes—for any land agent."

Probably Lord Wrenbury, who began a distinguished career by annotating the Companies Acts, was not present to demur to the phrase "lower strata of the legal profession," but it was a harmless gibe, and, indeed, the judges

would be in a poor way, both for statute and non-statute law, if they had not text-book writers to guide them. But this is a subject on which much might be said. Turn to 1921, 1 Ch., p. 542, where a page of Mr. Justice Astbury's judgment in *Re West* is a quotation from Jarman. And if it is objected that Jarman, and Sugden, and Farwell, and Dart, and a host of others, are not mere consolidators of statutes, the reply is easy that consolidation of statutes, which the Legislature is unable to effect, and the unravelling of the intricacies of "legislation by reference" with which the Legislature afflicts the judges, is a task not only of essential utility, but requiring at once learning, skill and judgment.

With regard to the work on the Agricultural Holdings Acts, written by the late Mr. T. C. Jackson, and now edited by Mr. Hanbury Aggs, it may be sufficient to say that it is an excellent example of the manner in which the learned lawyer—with deference to Lord Stuart of Wortley—makes good the deficiencies of the Legislature and enables judges and practitioners to do their duty to the public. Part II, dealing with Tenant-right Valuation, is a very useful feature of the book.

The Yearly Practice.

THE YEARLY PRACTICE OF THE SUPREME COURT FOR 1922. With Notes on Practice by Sir WILLES CHITTY, King's Remembrancer and Senior Master, and H. C. MARKS, of the Inner Temple, Barrister-at-Law, assisted by F. C. ALLAWAY, of the Chancery Division. Vol. I. and Supplement to Vol. II. Butterworth & Co. 40s. net.

This useful Practice retains all its wonted features and reaches its well-known standard of accuracy and convenience. It includes a number of new rules published since the commencement of last legal year. One of them is R.S.C., 1921, dated 23rd June, amending Order XI, r. 1 (*e*) by excepting defendants domiciled or ordinarily resident in Scotland from liability to be served out of the jurisdiction in actions within that sub-rule. Others deal with Poor Persons, the National Health Insurance Acts, the Supreme Courts Funds, 1921, the Administration of Justice Act, 1920, and various statutory matters of less importance. Needless to say, all these new rules are fully discussed in the present edition. We rather regret to see that the Courts Emergency Powers Acts and Rules have this year been omitted, as not everyone will think of looking for them in an earlier volume; but probably reasons of cost made the omission a matter of practical necessity. Further commendation of a work, the tried excellence of which is familiar to all our readers, is superfluous; we need only say that any changes in arrangement or revision of comment which we have noticed appear to us to be improvements, and that paper, printing, type seem as good as they always have been.

Law of Evidence.

THE LAW OF EVIDENCE. By SIDNEY L. PHIPSON, M.A. (Cantab.), of the Inner Temple, Barrister-at-Law. Sixth Edition. Sweet & Maxwell, 42s. net.

Mr. Phipson's Manual of the Law of Evidence is now almost a classic: it shares with Taylor and Roscoe a place in the very first rank of treatises on our English Law of Proof. Its great merit, of course, is the originality and logical character of its method of exposition. One uniform plan is retained throughout—that of stating (1) The Rules of Evidence, (2) The Principles upon which the practical Rule is formed, (3) The exceptions and qualifications of those Rules, and (4) Illustrations from actual cases. The latter, which form the larger half of the volume, have been arranged in separate columns and in parallel pairs, an affirmative and a negative case, whenever possible, being given side by side. The present edition has been carefully revised, but not much change has proved to be necessary. The Law of Evidence is now well settled and develops less rapidly than newer fields.

Carriage by Railway.

CARRIAGE BY RAILWAY. By HENRY W. DISNEY, B.A. (Oxon), of Lincoln's Inn and the Inner Temple, Barrister-at-Law, one of the Metropolitan Police Magistrates. 5th Edition. Stevens and Sons, Ltd. 12s. 6d. net.

The fifth edition of Mr. Disney's book "Carriage by Railway" is quite up to the standard of previous editions. The book is a very readable one and should appeal to many persons outside the legal profession, particularly, of course, to persons engaged in carrying on the railways, and those of the general public whose business it is continually to send goods by rail. The book also deals with the law relating to passengers and their luggage, and in its pleasant style should interest a large section of the public. It is a suitable book for students, both legal and otherwise; it makes no pretence to be an exhaustive treatise on railway law; but in so small a volume, all the essential subjects comprised in the title are dealt with in a most compact manner. The leading cases are referred to, not only in the text to illustrate the main principles, but in the footnotes for reference. The law has been brought up to date, and the most recent cases incorporated. Part III of the book deals with the statutory control and obligations of railways, and in our opinion, is not the least important part of it. The Railways Act, 1921, does not affect this particular subject, and is therefore not touched upon; no doubt, legislation in the near future will be required to deal with the question of rates and the obligations to traders, but it is probable that the principles at present in force will not be materially altered. Altogether it is a useful book, which we can cordially recommend.

The Law of Contract.

PRINCIPLES OF CONTRACT. By the Rt. Hon. Sir FREDERICK POLLOCK, Bt., K.C., D.C.L. 9th Edition. Stevens & Sons. 42s. net.

Considerable changes will be found in this new edition of a great common law text book. "Contracts by correspondence" are now dealt with as a class of agreements based on normal rules of law, although evidenced by writing; any apparent inconsistencies with this view are treated as paradoxes, not special rules of law. "Frustrated Adventure" cases, so numerous in the war period, are recast and greatly enlarged in scope. In fact, "Impossibility of Performance" undergoes a wholly new treatment. "Unilateral Promises" meets with new consideration in the light of the somewhat revolutionary doctrines taught by the late Dr. Ames of Harvard; but Sir Frederick prefers the narrower and settled rule of English Law, namely, that "every promise must be supported by consideration of some kind," to the wider, if more logical rule preferred by the American. This excellent edition may be commended to everyone.

Books of the Week.

Contract.—Principles of the Law of Contracts. By the late S. MARTIN LEAKE, Barrister-at-Law. 7th edition. By A. E. RANDALL, Barrister-at-Law. Stevens & Sons, Ltd. 50s. net.

Sale of Goods.—The Principles of the Law of the Sale of Goods. By HENRY AITKEN, K.C. Livingstone Educational Series, Vol. I. E. & S. Livingstone (Edinburgh). 10s. 6d. net.

Copyright.—Copyright Cases, 1920. By E. J. MACGILLIVRAY, LL.B. (Cantab.), Barrister-at-Law. The Publishers' Association. Printed for private circulation.

Correspondence.

THE LONG VACATION.

[To the Editor of the Solicitors' Journal and Weekly Reporter.]

SIR,—I regret to find that our President still defends the Long Vacation, and venture to suggest that in no other profession or business than the law would such an antiquated anomaly be allowed any longer to exist.

It took its rise in days when almost everybody had some connection with the soil and was intended to allow for farming operations, while the other vacations arose from litigation being considered too sinful to be conducted during the holy seasons of the church. Who can imagine a close time for bankers, when the merchant would no more be able to obtain an advance than he is now able to recover a just claim? I think the ideal should be for justice to be available to the subject in the King's Courts on every day except Sundays and Bank Holidays, but I recognize that progress towards this must be gradual.

I suggest that a beginning might be made by requiring all the officials of the Courts below the rank of Judges to return a month earlier than they do now, six weeks' holiday being amply sufficient for them. It certainly seems absurd to find inferior officials closing their offices as they do to-day at 2 o'clock while His Majesty's Judges remain at work until 4.15.

With regard to these last, I recognize that it is needful to make the Bench attractive to the first men of the Bar, and one of the inducements to a man to forego a large portion of his income is the certainty of a long summer holiday. It is also important that our Judges should have time to devote themselves to other occupations than the administration of justice, by which their minds may be kept fresh and supple. Therefore, I would not propose to shorten their holidays, but suggest that half of the Judges of the Court of Appeal and each division of the High Court should take the month of July as a holiday and return on September 12th.

This would necessitate putting the Summer Assizes sufficiently early to secure their being closed by June 30th, so that the Courts in July should only be depleted by that half of the Judges who were taking Vacation.

I also suggest that the rule against delivering pleadings in the Long Vacation should be abrogated, so that actions might be got ready for trial before the Courts re-opened on September 12th. This would only mean that the Junior Bar would have to arrange their holidays amongst themselves, so that there might be always one man in each set of chambers available to settle Pleadings during the Vacation.

THEODORE ROBERTS.

14, Queen Victoria Street,
Bank, London, E.C.4,
10th October.

New Orders, &c.

A Proclamation.

REVOKING A PROCLAMATION, DATED THE 10TH DAY OF MAY, 1917, AS AMENDED AND ADDED TO BY SUBSEQUENT ORDERS OF COUNCIL AND BY THE PROCLAMATIONS DATED RESPECTIVELY THE 18TH DAY OF DECEMBER, 1918, AND THE 12TH DAY OF MARCH, 1919.

Whereas by a Proclamation, dated the 10th day of May, 1917, made in pursuance of Section 8 of "The Customs and Inland Revenue Act, 1879," and Section 1 of "The Exportation of Arms Act, 1900," and Section 1 of "The Customs (Exportation Prohibition) Act, 1914," and Section 1 of "The Customs (Exportation Restriction) Act, 1914," We thought fit, by and with the advice of Our Privy Council, to prohibit the Exportation from the United Kingdom of certain articles:

And whereas it is provided by Section 2 of "The Customs (Exportation Prohibition) Act, 1914," that any Proclamation or Order in Council made under Section 8 of "The Customs and Inland Revenue Act, 1879," as amended by the Act now in recital, may, whilst a state of war exists, be varied or added to by an Order made by the Lords of the Council on the recommendation of the Board of Trade:

And whereas it is provided by Section 2 of "The Customs (Exportation Restriction) Act, 1914," that any Proclamation made under Section 1 of "The Exportation of Arms Act, 1900," may, whether the Proclamation was made before or after the passing of the Act now in recital, be varied or added to, whilst a state of war exists, by an Order made by the Lords of the Council on the recommendation of the Board of Trade:

And whereas by subsequent Orders of Council, and by Proclamations dated respectively the 18th day of December, 1918, and the 12th day of March, 1919, the said Proclamation was amended and added to in certain particulars:

And whereas it appears expedient to Us that the said Proclamation, dated the 10th day of May, 1917, as amended and added to by subsequent Orders of Council, and by the Proclamations dated respectively the 18th day of December, 1918, and the 12th day of March, 1919, should be revoked:

Now, therefore, We, by and with the advice of Our Privy Council, hereby proclaim, direct and ordain that the said Proclamation of the 10th day of May, 1917, as amended and added to by subsequent Orders of Council and by the Proclamations dated respectively the 18th day of December, 1918, and the 12th day of March, 1919, shall be, and the same is hereby, revoked.

11th October. [*Gazette*, 11th October.

Home Office Order.

RIOT.

Regulations have been made under the Riot (Damages) Act, 1886 (49 and 50 Vict., c. 38), dated 1st October, 1921, as to claims for compensations They are printed, with Schedules containing forms of claim, in the *London Gazette* of 7th October.

Board of Trade Order.

RULES OF PROCEDURE FOR COMMITTEES UNDER PART II OF THE SAFEGUARDING OF INDUSTRIES ACT, 1921 (11 & 12 Geo. 5, c. 47).

Notice is hereby given, that the Rules of Procedure for Committees under Part II of the Safeguarding of Industries Act, 1921, have been published as Statutory Rules and Orders, 1921, No. 1514, and copies of the same can be purchased (price 1d. net) either directly or through any bookseller, from His Majesty's Stationery Office at the following addresses: Imperial House, Kingsway, London, W.C.2; 28, Abingdon Street, London, S.W.1; 37, Peter Street, Manchester; 1, St. Andrew's Crescent, Cardiff; 23, Forth Street, Edinburgh; or from Eason and Son, Ltd., 41 and 42, Lower Sackville Street, Dublin.

Ministry of Transport Order.

RATES ADVISORY COMMITTEE.

PROPOSED NEW CLASSIFICATION OF GOODS BY MERCHANDISE TRAINS.

Take notice, that the Rates Advisory Committee will hold a public meeting at 11 a.m. on Tuesday, 18th instant, in the Old Hall, Lincoln's Inn, London, W.C.2, to consider the general question of placing goods in a lower class when consigned in large lots. Any person or Association wishing to be heard at the meeting should give written notice to the Secretary, Rates Advisory Committee, at the address given below, not later than Monday, 17th instant.

Attention is drawn to a memorandum prepared by the Railway Companies "regarding the applications made by Traders for reduced rates for large quantities," printed as an appendix to the 46th day's proceedings of the Rates Advisory Committee, 22nd June, 1921. Copies of such proceedings may be obtained from H.M. Stationery Office, Imperial House, Kingsway, London, W.C.2, price 1s. 6d.

By Order of the Committee. *S. J. Page*,
Secretary.

7th October, 1921.
Rates Advisory Committee,
Ministry of Transport,
Gwydyr House,
Whitehall, London, S.W.1.

Commission.

GREATER LONDON.

The following are the terms of reference for the Royal Commission on the Local Government of Greater London:—

To inquire and report what, if any, alterations are needed in the local government of the administrative County of London and the surrounding districts, with a view to securing great efficiency and economy in the administration of local government services and to reducing any inequalities which may exist in the distribution of local burdens as between different parts of the whole area.

The members of the Commission are The Right Hon. the Viscount Ullswater, G.C.B. (chairman), Sir Richard Vassar-Smith, Bart., Sir Albert Gray, K.C., K.C.B., Sir Horace Cecil Monro, K.C.B., Mr. George John Talbot, K.C., Mr. Neville Chamberlain, M.P., Mr. Robert Donald, LL.D., Mr. Ernest Haviland Hiley, C.B.E., Mr. Edmund Russborough Turton, M.P. There will also be a representative of Labour, whose name will be subsequently announced. The Secretary of the Commission is Mr. Michael Heseltine, C.B., of the Ministry of Health, Whitehall, S.W.1, to whom all communications relating to the work of the Commission should be addressed.

Societies.

Middle Temple.

A memorial service was held in the Temple Church on Tuesday for the late Mr. J. H. Balfour Browne, K.C., and the late Sir David Brynmor Jones, K.C., who were both benchers of the Middle Temple. The service was fully choral and began with the singing of "Nearer, my God, to Thee," followed by the anthem "The souls of the righteous are in the hand of God," and ending with the hymn "Now the labourer's task is o'er." The Master of the Temple officiated, being assisted by the Rev. R. F. Rynd, the Reader. The following Masters of the Bench of the Middle Temple were present: The Lord Chief Justice, Treasurer, Lord Phillimore, Lord Shaw, Mr. Justice Clavell Salter, Mr. Justice McCardie, Mr. English Harrison, K.C., Sir H. Worsley-Taylor, Bt., K.C., Sir R. A. McCall, K.C., Sir John Edge, K.C., Sir Forrest Fulton, K.C., Mr. Blake Odgers, K.C., Mr. Brogden, Mr. Macmorran, K.C., Sir C. F. Gill, K.C., Mr. Lindsay, K.C., Mr. Aspinall, K.C., Mr. Laing, K.C., Mr. Hamilton, K.C., Mr. de Gruyther, K.C., Mr. Newton Crane, Judge Sir Alfred Tobin, K.C., Mr. Kemp, K.C., Mr. Honoratus Lloyd, K.C., Mr. de Colyar, K.C., Mr. Vachell, K.C., Mr. St. J. G. Micklethwait and Mr. Nelson. Lord Southwark, Lord Sterndale, Colonel Tamplin, K.C., and Mr. Leif Jones, Sir David Brynmor Jones's brother, were also present.

Law Society.

It is announced in this month's *Law Society's Gazette* that the following appointments of Extraordinary Members of the Council were made at a meeting of the Council on 7th September:—

Mr. William Arthur Weightman, on the nomination of The Incorporated Law Society of Liverpool.

Mr. Richard Alfred Pinsent, on the nomination of The Birmingham Law Society.

Mr. William Henry Norton, on the nomination of The Manchester Law Society.

Mr. Charles Edward Barry, on the nomination of The Bristol Law Society.

Mr. William Waymouth Gibson, on the nomination of the grouped Societies in the Northern District.

Mr. Charles Scriven, of Leeds, on the nomination of the grouped Societies in Yorkshire.

Sir Charles Elton Longmore, K.C.B., on the nomination of the grouped Societies in the Eastern District.

Mr. Harry Rowsell Blaker, on the nomination of the grouped Societies in the Midland District.

Mr. Richard Farmer, on the nomination of the grouped Societies in the Western District.

Mr. Thomas Eggar, on the nomination of the grouped Societies in the Southern District.

The appointments are made for the period terminating at the conclusion of the Annual General Meeting to be held in the year 1924.

THE INNS OF COURT O.T.C.

(THE DEVIL'S OWN.)

AN APPEAL TO THE LEGAL PROFESSION.

We desire to bring to the notice of all members of the legal profession of military age, the revival of the Inns of Court O.T.C. (T.F.), which has throughout its long and honourable history always been closely associated with the Law, although in no way confined to members of the legal profession.

This Corps, the direct descendant of the various regiments raised by the Inns in times of danger during many centuries, has played its part with credit and devotion during the whole of its career, as both a Volunteer and a Territorial unit.

The policy of converting it in 1909 into an Officers' Training Corps, was most convincingly justified by results in the Great War, when it supplied officers to every unit and every branch of the Service, to the number of over 11,000, making thereby an invaluable contribution towards solving one of the most difficult and pressing problems of the time.

The Corps is now in active process of revival, and it is desired to resume and strengthen the intimate connection, necessarily to some extent interrupted by the War, between the Corps and the legal profession.

There must be many members of the profession who, after having held commissions during the War, now find themselves, for various reasons, unable to continue to serve as officers, but would still welcome the opportunity to maintain their efficiency, especially under the agreeable conditions offered by the Corps and with every prospect of again securing a commission without delay, should an emergency arise.

There must also be many amongst the students and younger members who were debarred by their age from serving in the War, but would be glad to keep up to date the military knowledge acquired in their School O.T.C.s.

To all these and others connected with the Law, we earnestly appeal to join the Inns of Court O.T.C., and by strengthening the bonds uniting the two to help in carrying on the distinguished traditions of the Corps and maintaining the reputation of the profession for patriotism and public service.

The Headquarters of the Corps are at 10, Stone Buildings, Lincoln's Inn, W.C.2, where those intending to join can obtain all information.

BIRKENHEAD, C., *President of the Recruiting Committee.*
READING.
A. T. LAWRENCE, C.J.
STERNDALE, M.R.
HENRY E. DUKE, P.
GORDON HEWART, A.G.
ERNEST M. POLLOCK, S.G.
ALFRED HOPKINSON, *Treasurer of Lincoln's Inn.*
A. M. BREMNER, *Treasurer, Inner Temple.*
CHARLES C. SCOTT, *Treasurer of the Middle Temple.*
ARTHUR GREER, *Treasurer, Gray's Inn.*
C. H. MORTON, *President of the Law Society.*

[We are informed that since the above was signed, a change in the status of the Corps has been sanctioned by the authorities, and it has now been officially announced that the Corps will become a Militia O.T.C. Unit. The period of annual training will, however, remain 15 days, and the other obligations of members of the Corps will be substantially the same as those demanded of territorial soldiers.]

The Reform of the Leasehold System.

The following is the paper on this subject which was read by Mr. Samuel Saw, of Greenwich, at the recent Provincial Meeting of the Law Society at Scarborough :—

The Law Society has again stood up before the world as the champion of law reform. The colossal Bill called The Law of Property Bill seeks to remove innumerable defects and technicalities of the law which have grown up and survived during the last 1,000 years. It is substantially the offspring of this Society, and it has had for its sponsor Lord Birkenhead, the Lord Chancellor of England. Its very magnitude, however, has been the cause of its temporary collapse, and it remains to be seen whether this or the next Parliament can revive it. But it omitted to deal with one subject for law reform which I venture to think is even more urgent than the repeal of the Statute of Uses or the creation of entails of personal estate. I refer to the leasehold system. If in my remarks I should appear to be too technical for the layman, or to mention matters which are too elementary and too self-evident for the lawyer, I must apologize and explain that my object is to state my case so that it may be understood by all.

There are three essentials for successful law reform: first, a case must be made out; second, the approval of public opinion must be secured; and third, political support must be obtained. I shall limit myself to the first requirement and endeavour to make out a case and show it to be an urgent one.

To anybody but the lawyer it must seem strange that if a man lets a strip of unproductive land to another in order that he may build upon it, and charges him a rent for the bare ground of say 10s. a foot frontage, or £20 a year, that then, after the lessee has built a fine house or shop or bank upon it, and the lease comes to an end, the house or shop or bank becomes the absolute property of the man who formerly owned the vacant piece of land, or of his successor in title, free of any payment or compensation whatsoever; and further that he should be entitled to claim heavy damages if the house or shop or bank is not left in such perfect state of repair and decoration as he thinks it should be left in for the benefit of his own future occupation, or the occupation of someone to whom he may let it at a rack rent, or sell it for its full market value. Such, however, is the leasehold system. It has also a number of other peculiarities, and it is of these that I wish now to speak.

Leases of land for building purposes are granted either for a definite number of years, such as 60, 80 or 99 years, and in some rare and estimable

cases, 999 years; or the land is let on lease during the continuance of a limited number of lives then in being, generally three lives and sometimes a further life in reversion. The rent charged for the use of the land is called the ground rent, and the lease contains a multitude of covenants or agreements on the part of the lessee to build on the land at his own expense, to keep in repair, to insure, not to do a number of things, and to do a number of other things, and at the end of the lease, either by effluxion of time or on a forfeiture before that time, to deliver up the land and all that is erected upon it in a good and substantial state and condition of repair. It is never provided, as in the case of land let for agricultural purposes, that the landlord shall pay the tenant anything for the value of the buildings or improvements; all belongs free gratis to the landlord with damages for any dilapidations.

Now that seems unjust enough; but there is more to follow. If the lessee or his successor breaks any of the covenants of the lease, however arbitrary they may be, there is a proviso that the landlord shall have a right to re-enter and put an end to the lease, turn the lessee out, and take all that has been erected upon the land for himself. So unjust has this proviso been considered to be, that from time to time reforms have been enacted giving the lessee a right to relief against the forfeiture of his property upon fair and reasonable terms. But there is still one breach of covenant for which even the Court of Chancery is powerless to grant any relief. If the lease should contain a covenant that the lessee shall not transfer or assign his lease to anyone else, or underlet the property or part with the possession of it or any part of it, even for the most limited period, without obtaining the consent of the landlord, the lease is forfeited, without any power even of the Courts of Equity to grant relief, and the lessee is turned out, and may have to pay the cost of his own eviction. If, therefore, a man has taken such a lease of a field of unproductive land and has levelled it, drained it, made roads, paths, and sewers, and built, say, fifty houses upon it, and he happens to assign or underlet one of the houses without his landlord's previous consent, his lease is forfeitable and he has no redress. This, surely, is a scandal which should not be allowed to continue for another day; but it will need an Act of Parliament to remove it.

Now the lessee is bound at all times during the lease to keep the property in a good and substantial state of repair and decoration, and although it may be 50 or 70 years before the landlord will be entitled to come into possession of the property, the lessee is liable at any time to have the landlord's surveyor come upon the property and make a schedule of alleged wants of repair or decoration, and the lessee is bound to comply with the surveyor's demands within three calendar months. At the present time there is a custom coming into fashion for speculators in land, both Jews and Gentiles, to buy up freehold or leasehold land which has been built on, and at once serve notices of dilapidations and put the lessees or underlessees to unreasonable and unnecessary expense, and in default of compliance the lessee may be subjected to an action of law, and either lose the property or be compelled to make an unnecessary outlay upon it, or pay a substantial sum in lieu thereof. The alternative, and in most cases the real motive, is to make the lessee buy the speculator out, and this he is perhaps allowed to do at about double the price at which the speculator has bought the property. This practice is becoming very prevalent and is most objectionable and oppressive, and should form the subject of enquiry and control. The landlord is under no obligation to expend the money received for repairs under a notice to repair the property, but he can put it in his pocket and repeat the process after a short lapse of time. I can give many instances where this has been done recently in London, and is still being done.

Again, there are many estates held by large landowners or city companies or other corporations, and even wealthy charities, which consist of large tracts of land now covered with houses built entirely at the cost of former leaseholders. Such leases for 70 or 80 years having come to an end, the landlords, instead of continuing to receive their original ground rents, have come into possession of the rack rents of large numbers of houses. During the Great War, it was notorious that little or no repairs of a substantial kind could be done, and after the war the prices were most extortionate. But nevertheless, claims for dilapidations have been showered upon the unfortunate holders of these expiring leases, and if they had anything to lose, they had either to execute the repairs at inflated prices for the future benefit of the landlords, who now enter into possession of their buildings, or else pay large sums of money by way of damages to prevent themselves from being sued and ruined and thrown into bankruptcy. Having obtained enormous sums of money in this way, there is no obligation on the part of the landlords to expend the money so received in improving the property, and the unfortunate occupiers are left to continue to live in the houses just as they were left by the late lessees, and so the houses in this way gradually degenerate into the category of slum property, whilst the dearth of houses prevents the occupiers moving out and getting better accommodation elsewhere. There would perhaps be some consolation if the community had some share in the spoils which fall into the landlords' hands, and it will be remembered that in 1910 Mr. Lloyd George introduced his famous budget enacting several kinds of taxes on land. We all remember the outcry against having to fill up "Form Four," and how landowners and builders thought they were going to be ruined. So much so that the building of houses ceased and the present dearth is partly the consequence. One of these taxes was that called "Reversion Duty," which required the landlord to pay over to the State 10 per cent. of the value of the property which he became possessed of on the expiration of a lease. Surely this was a just and most moderate tax, but although it should by now have produced a very handsome revenue to the Exchequer, it has been abolished by Parliament, together with the Increment Value Duty and Undeveloped Land Duty, under the Premiership of the same statesman who originally introduced them.

There are many instances in which arbitrary conduct on the part of the lessor is unjust to the lessee or underlessee. The exaction of heavy fines on granting consents to alter and improve property are not uncommon. The liability of the lessee or underlessee or assignee of any part of the property comprised in the superior lease for the rent of the whole, or for the consequences of a breach of covenant by the original lessee is well known, and often works great hardship. An illustration will suffice. A freeholder granted a lease of a piece of land at a substantial ground rent. The lessee built houses on three-quarters of the land and sold them, and granted underleases to the buyers of each house at moderate ground rents. If he had built on the rest of the land and underleased the houses at similar ground rents, the whole of the head ground rent would have been more than secured. But he surrendered the unbuilt on land to the freeholder for a cash payment and a reduction of the head ground rent by one-fourth. He or his successor in title then made default in paying this reduced ground rent, and the freeholder demanded it of the underlessees, and as their ground rents are not sufficient to meet the freeholder's demands, they are liable to ejectment if they do not pay up the deficiency, and in default of this, their tenants are threatened each half year with a distraint on their goods. When the injustice of this is pointed out, the only reply of the freeholder is "That's "nothing to do with me. I want my rent and if it is not paid I shall distrain "on your tenants' goods." This he is entitled to do at law, but the genius of Lincoln's Inn should devise a remedy for such an injustice.

I now wish to say a few words about the still more objectionable system of granting leases of land and buildings, namely, those granted during the continuance of two or three lives. This system is even more of a gamble than that of leases for a term of years. It prevails mostly in Cornwall, Devon, the West of England and Wales. A recent case has come to my knowledge of a farm held on two lives being left by will to a lady, who hoped to enjoy it for a considerable time. But the first life died within a year, and the other life ended by suicide. The farm then reverted to the landlord, and could only be secured by purchase and the grant of a new lease for fresh lives, and, of course, subject to the payment of an annual rent. It need hardly be pointed out that such a precarious system of ownership is absolutely incompatible with the erection and maintenance of the best class of buildings, for why should a large outlay be made, when the whole benefit may be lost at any moment through circumstances over which the investor has no control. The lessee has always to be prepared to prove that at least one of the lives is still in being, and if he is unable to prove this, the property can be sold over his head, and his claim to the property ignored. It will be seen how hazardous the holding of such property must be, and what openings are given for oppression on the part of unscrupulous landlords or their agents. A case at Malvern may be given as an illustration. A tradesman stated not long ago: "Over twenty years since I bought "some property of this leasehold kind. It was for business premises and "none other could be had. I improved it to make it suitable for my "trade, doing as little as possible. Two lives have dropped in that twenty "years and I have paid in renewal fines £1,100. My neighbour has paid "over £2,000 for life renewals in the same time and still the properties "are not our own, and are liable any day to make other claims on us by a "departure of a life."

Numerous other cases can be found in a little book published in Truro, called "The Bitter Cry of Cornish Leaseholders," and a still more complete exposure of the evils of the leasehold system generally can be found in a book published in 1885, by Mr. Henry Broadhurst, M.P., and Mr. R. T. Reid, M.P., the latter afterwards known and happily still known as Lord Loreburn, an ex-Lord Chancellor of England. This book was written to support the cause of "Leasehold Enfranchisement" (which is the title of the book), and one quotation from its pages must suffice. "The present law allows "to owners of land thus favourably situated all the advantages of a complete "monopoly, and they have used their powers in the spirit of monopolists "by imposing on the public the leasehold system above described. Some "grant terms for years, other grant terms for lives. The public is at their "mercy and has to accept whatever conditions are offered or go elsewhere. "This may be endured if the result is satisfactory. If otherwise, argument "seems hardly to be required in favour of a reform. The next step is to "examine the real effects of the system. To say that it enables landowners "to plunder their lessees and injures the whole community by deterring "occupants of houses from improving them, is no exaggerated statement" (p. 19).

I must refrain from further quotations or illustrations, and have no time to go into details as to the remedy. Many attempts have been made to provide for a system of leasehold enfranchisement by compulsory purchase of the freehold, but whilst the law and the facts still remain as they were in 1885, nothing has been done. A Bill was introduced by Mr. Broadhurst with influential support in 1883: another by Lord Randolph Churchill and Sir Henry Drummond Wolff in 1884: a further Bill by Mr. Broadhurst in 1885: and another by Col. Hughes, the Conservative M.P. for Woolwich and a Member of this Society, later on. Both political parties therefore have from time to time recognised the urgent need of reform.

It is quite possible, however, that leasehold enfranchisement by the compulsory purchase of the freehold is not the only remedy. It might, perhaps, be more satisfactory if it were enacted that every building lease having twenty-one years or even less unexpired, should be automatically enlarged into a lease for 999 years from the date of the expiration of the existing lease. The present ground rent might continue to be payable until such existing lease expired and from that date the rent should be a nominal or peppercorn one. In this way the landlord would suffer no loss of income, and he should be paid such a sum as might be the value of the reversion expectant on the determination of the existing lease such sum being either paid down at once, or partly in cash down and the rest secured by a small additional ground rent, which should be applied in obtaining a sinking fund policy for such balance payable at a future date. Such an additional annual rent need be comparatively small, seeing that even on pre-war tables a sum of 3s. 4d. a year would produce £100 at the end of 100 years. or 17s. 3d. a year would produce £100 at the end of 50 years. But I do not propose to do more than indicate a method of providing for the just claims of the landlord: there are many possible methods from which a choice can be made. But it would be absolutely essential that any scheme of reform should provide for the establishment of some Court of Law or other tribunal to which all cases of compensation or relief should be referred, with power also to declare any covenants which were unreasonable or oppressive, or which were unreasonably or oppressively enforced, invalid or obscure. The costs of all applications should be in the discretion of the Judge or Arbitrator, and should be limited by scale in proportion to the value of the property, and be borne by the parties in equal shares or wholly by the unreasonable or oppressive party in any such cases. The value of the reversions for which the money payments were to be made could be easily ascertained by actuarial tables, and the mode of payment provided for either by agreement or by the award of the judge. If it should be contended that this proposal conflicts with what is called "liberty of contract," I can only point out that almost all legislation has a tendency to be in the nature of such interference. For instance, Parliament has enacted that if a local authority decides that a certain area is an insanitary one, or one which in the interest of the community should be cleared of houses and rebuilt on, it can serve notices on the owners and order their houses to be pulled down, although many of them may have been kept in a good and sanitary condition, but they are all treated alike, and the only compensation given is to the freeholder of the land, who is to be paid only the value of his property as though it were land entirely divested of all buildings. Many other instances could be given—such as the compulsory enfranchisement of copyholds and the compulsory redemption of tithes: in fact, the existing provisions for relief against forfeiture under the Conveyancing Act of 1881, and it is too late in the day to say that no reform of the law must be made if it interferes with existing contracts. The public welfare is the supreme consideration, and this should be secured with the least possible hardship to individuals who may be affected.

I trust that in calling attention to this urgent matter I may succeed in helping forward the efforts for reform which have been so repeatedly made during the last 50 years by abler advocates than myself.

The Right Hon. Sir David Brynmor Jones (sixty-nine), P.C., K.C., LL.D., of Bryanston-square, W., Liberal M.P. for Mid-Gloucestershire 1892-5, and for Swansea 1895-1914, formerly County Court Judge of the Mid-Wales Circuit and the Gloucestershire Circuit, Recorder of Merthyr Tydfil, 1910-14, and of Cardiff 1914-15, a Master in Lunacy since 1914, a former chairman of the Welsh Parliamentary Party, and a son of the late Thomas Jones, of Swansea, a former chairman of the Congregational Union, left estate of gross value £9,238.

Memorial to Sir Samuel Evans

The Lord Chancellor unveiled on Wednesday a marble bust of the late Sir Samuel Evans. The ceremony was performed soon after the official opening of the Courts for the Michaelmas term, and there was, consequently, a large attendance, not only of those connected with the courts, but also of the general public. Among those present were:—

Lord Shaw, Lord Mersey, Lord Justice Bankes, Lord Justice Sankey, Lord Justice Warrington, Lord Justice Scrutton, Lord Justice Atkin, Lord Justice Younger, Lord Justice Sargent, The Master of the Rolls, Sir Henry Duke, Mr. Justice Acton, Mr. Justice Greer, Mr. Justice Darling, Mr. Justice Horridge, Mr. Justice Salter, Mr. Justice McCardie, Mr. Justice Hill, Mr. Justice Avory, Mr. Justice Peterson, the Attorney-General, the Solicitor-General, His Honour Judge Hill Kelly, His Honour Judge Ivor Bowen, Messrs. E. Rowland Thomas and J. T. Lewis (Hon. Secretaries of the Executive Committee). A letter had been received from Lady Evans, who is in America, regretting her inability to be present.

Mr. W. Llewellyn Williams, leader of the South Wales Circuit, Recorder of Cardiff, Chairman of the Memorial Executive Committee, asked the Lord Chancellor, as representing those controlling the Courts, to accept the bust from the subscribers.

The Lord Chancellor said that the occasion which brought them together was, in his judgment, a very remarkable one. Mr. Llewellyn Williams, who spoke with high authority on behalf of the bar, and particularly of that branch of the bar of England which to its advantage had for a long period of time been recruited from Wales, had invited those who were responsible for the control of those buildings to accept the bust which had been privately subscribed for by the friends and admirers of Sir Samuel Evans. He (the Lord Chancellor) was there on behalf of the English bench and, he was glad to claim, on behalf also of the whole of the legal profession, to accept with sincere gratitude the gift which was thus profferred to those legal halls. He had known the late Sir Samuel Evans; he might even claim him as a friend, as those at the bar were in the habit of doing. He had studied the career of a man who, from the very beginning when he began that career as a solicitor had met with success in practising in that branch of the profession. After years of practice as a solicitor, Sir Samuel Evans was admitted to the bar and, not very long after he became a member of the bar, he was elected to be a member of the House of Commons. He developed very extraordinary Parliamentary gifts, but, at the same time, his progress at the bar, though continuous and considerable, was much more marked, as perhaps was natural, in Wales than in London; and there was an illustration, not novel in the history of great legal reputations, of a man of provincial origin, equipped with the highest gifts, who had not the opportunity of persuading the great world of London which, and which alone, could give the final imprimatur of forensic success, of the powers which he undoubtedly possessed. But the tragedy of his career, if tragedy there was in a career which undoubtedly, on balance, was of supreme distinction, the tragedy of his career was that the claims of the legal circuit on which his livelihood depended required that he should be in Wales, as each month and each year his reputation in Parliament increased. So that it was true to say of him in the year 1905 that, if he had not been a member of the bar, if he had been an ordinary member of the House of Commons, relying on all that he had achieved in the House of Commons as being the foundation of his career, he might reasonably have hoped at that moment to attain a high ministerial position. He had to consider, as many distinguished members of the legal profession

before and after had had to consider, the question of his own livelihood. And at this period of his life his livelihood depended upon the support of the solicitors of Wales, which was accorded to him in full knowledge of his forensic gifts. And then came the election of 1906, and in due course Sir Samuel Evans became Solicitor-General. He (the Lord Chancellor) had been in Parliament for fifteen years. He was a member of the House of Commons for twelve of those years. He had listened to the arguments of many law officers. It had been his singular misfortune to have disagreed with them all. Because until the moment when he became a law officer himself, those opinions were for a long period of time delivered by those from whom he profoundly differed, and therefore he hoped that his opinion in the matter might be accepted as one of some value, and he said deliberately that, having sat in opposition in the House of Commons through a long series of law officers, his conclusion was that no more accomplished Parliamentarian than Sir Samuel Evans, in the fifteen years that he remembered Parliament, ever occupied the position of a law officer. And he said plainly that in those days he had not much knowledge of the position of Sir Samuel Evans at the bar. He knew little of the Welsh Circuit, and he knew him only as the personality of the man was expressed in the speeches that he made in the House of Commons, and he came to the conclusion on these that he was a man of first-class intellectual powers, judged by any standard by which lawyers had measured those who had held responsible positions as law officers. Such was Sir Samuel Evans as Solicitor-General. He was persuaded, and he (the Lord Chancellor) had often thought that he was unwise to yield to that persuasion—he was persuaded to surrender the position of Solicitor-General in order that he might become President of the Probate, Admiralty and Divorce Division. No one would think he made the mistake of undervaluing the office which Sir Samuel Evans then undertook, but he believed they would regard his own view that, on the certain evolution of legal history in these islands, if he had not at that moment accepted the office of Solicitor-General, had such been his wish, he might have sat in the seat which he (the Lord Chancellor) filled to-day, and he would have occupied it with a distinction which his great qualities would make plain. Such was the man and such was his record at the moment when the Great War broke out. And when the war broke out, if it could have been heard, adequate forensic opinion would, he thought, have said of him that, in administering the Divorce side of his work he was quick, tactful and dexterous, and no one would have said of him upon the Admiralty side that he did not bring to the judgment of matters which to him were novel and difficult, an informed, patient, and discriminating mind. Such, he thought, would be the legal valuation of his powers in August 1914. And then came the great war, and then also came among those who understood the history of the subject, the realisation that as there were many tests to which this nation must respond in the years that lay in front of them, there was this test also, of whether there was presiding in the Probate, Admiralty and Divorce Division a man who was adequate to the great traditions of the past and, he said it plainly, to the greater traditions of the present. Lord Stowell, to whose kingdom Sir Samuel Evans succeeded—and he had always thought, he stated it plainly, he possessed a mind more agile, more resourceful, more constantly in touch with that of his brother lawyer who attained to a higher titular rank in this country—had for many years presided over the Prize Court of this country during a period of unexampled stress. It had not been the fortune of any great man to be called upon over any sustained period to enumerate the whole body of doctrine of international law in its maritime aspect, and to relate it to fundamental and penetrating principles. That task fell to Lord Stowell and, he said advisedly, looking back on the whole judicial history of this country, that no figure stood upon a higher pedestal than that of Lord Stowell, to the man who examined international law on the maritime side as it existed before the war. Sir Samuel Evans, before trying prize cases, had been known as a very acute judge upon the Divorce side and as a competent judge upon the Admiralty side. What warrant or expectation was there or could there have been formed that he would adequately or with supreme distinction have discharged the task which then awaited him? He inherited indeed, a body of doctrine, coherent, learned, based upon intelligible principles. But it was almost as if he had inherited a frigate in order to embark it in a naval contest with a dreadnought. Because admirable as the earlier structure was, it had no relation to the changed necessities of the time, and it was one of the gravest questions of the war whether we should discover in the President of the new Prize Court a man possessed of the industry and of all the intellectual qualities which would enable him to deal with and overcome the necessities of 1914 and to preserve the structure which had been bequeathed to him by the genius of Lord Stowell. It was a supreme illustration of the good fortune of this country that a man of authority at the crisis was afforded—not by his normal success at the bar which was denied to him by the fact that his public was a provincial public and not a London one, but by the opportunity given to him by his Parliamentary talents, of becoming the Solicitor-General—the opportunity of presiding in the court, a man of whom he said, choosing his words deliberately and having some knowledge of his present colleagues when he was at the bar, and an even closer knowledge now, there was no man living in England more qualified to discharge the duties which awaited him. And what were those duties? It was easy for us now, at a moment when later problems were engaging our attention, to forget the anxieties and the troubles of those days. Should we ever forget that in adapting that body of doctrine, the most powerful neutral country in the world was in the juridical field contesting at every stage every decision that we might take? We should not, he thought, forget that whilst Sir Samuel Evans held the scale clear, he held it not as a judge might hold it when all was to the hazard between belligerents, each of whom knew that mercy was neither given nor asked. He held it with the knowledge that there was a great and powerful neutral whose adhesion to one side or the other necessarily would determine the whole event of the war. For nearly four years it was his fortune to argue various legal matters with regard to the subject before Sir Samuel Evans. He carefully studied—it was his duty—the judgments that Sir Samuel Evans gave and the reasons upon which he founded those judgments, and he carefully studied also the decisions of the Judicial Committee of the Privy Council. He had the highest respect for the Appellate Tribunal which considered and sometimes interfered with the judgments of Lord Stowell. He had also a deep admiration for the Judicial Committee of the Privy Council which sat in appeal upon the judgments of Sir Samuel Evans, and yet, he boldly affirmed, that when history upon its legal side, of these five troublous years was collected, when the judges to whom the task was entrusted should declare the lessons of the maritime side of this war they would go to the judgments of the late President, Sir Samuel Evans, and not to the judgments of an appellate court however distinguished. He had given some little time to the study of the matters with which Sir Samuel Evans was peculiarly called upon to deal. His own view was that Sir Samuel Evans was tried more highly than Lord Stowell was tried, and for the reason that in the Napoleonic controversies the position of neutrals was fairly closely determined and Lord Stowell could apply maxims to the matters that came before him that were not always open to Sir Samuel Evans. And, making due allowance for all these considerations, he affirmed that Sir Samuel Evans would be remembered by those who studied the history of this country in the great crisis, side by side and equally with Lord Stowell. He had said something upon Sir Samuel Evans' judicial side, he would add a word—because it was certain that he was addressing many who had been his friends—he would add a word with regard to Sir Samuel Evans in his private capacity. He was an affectionate friend. He was, in the convivial intercourse of private life which sweetened toil and sometimes alone, made continued and repeated toil tolerable, a loveable man. No man who enjoyed his friendship would ever forget the exhibition of the social spirit with which he, as much as any man he had ever known, could render friendship attractive. All that was lost. There remained only this marble memorial to recall that which contained a brain so swift and a heart so ardent. Let it recall to succeeding generations as they paced those stately halls, that a judge might be learned without pedantry, industrious without dulness, mundane without triviality. And if anywhere he knew anything of that which they were doing and thinking to-day, they would believe him—his friend who knew him well—that he would treasure, far more than any tribute expressed in terms of marble or rhetoric, the kindly thoughts and the affectionate memories that thronged their minds.

The Lord Chancellor then unveiled the bust. It is the work of Sir George Frampton, R.A., and bears the inscription: "The Rt. Hon. Sir Samuel Thomas Evans, K.C., LL.D., G.C.B., Solicitor-General, 1905-1910 President of the Probate, Divorce and Admiralty Division, 1910-1918. Born 1859. Died 1918.

Legal News.

Dissolutions.

WALTER PERKS, THOMAS HENRY TERRY, EDMUND MELLIAR SMITH and DOUGLAS STUART GIBBON, Solicitors (Ward, Perks & Terry), 85, Gracechurch-st., London, E.C.3, 30th day of September, 1921, so far as concerns the said Douglas Stuart Gibbon, who retires from the firm on his appointment as Taxing Master. [*Gazette*, October 7th.

EDWIN EMLEY and CHRISTOPHER BARKER SYMONDS, Solicitors, Blyth, Northumberland (Lynn & Rutherford), 30th day of June, 1921. The said Edwin Emley will continue to carry on the said business on his own account and under the said name of "Lynn & Rutherford." [*Gazette*, October 11th.

FREDERICK WILLIAM MILLS and JAMES FLOWER BEST, Station-street Buildings, Huddersfield, York, Solicitors (Mills & Best), 1st day of October, so far as concerns the said Frederick William Mills, who retires from the said firm. [*Gazette*, October 11th.

Appointments.

The Lord Chancellor has appointed Mr. A. C. THOMAS, of the Associates' Office, Royal Courts of Justice, to be Chief Associate, in the place of Mr. James Kenyon, who recently retired.

Mr. P. E. DIMES, of the Solicitors' Department of the L.C.C., has been appointed Assistant Solicitor in charge of the Public Inquiries and Prosecutions Branch.

Mr. CLARENCE GOULLEE SYRETT, of Messrs. Syrett & Sons, 45 Finsbury Pavement, E.C.2, has been appointed a Commissioner to take Oaths for the Supreme Court of the State of South Australia. Mr. Syrett was admitted in April, 1897.